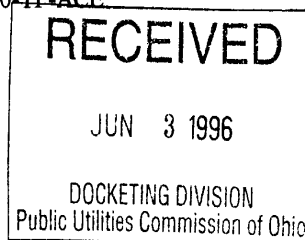


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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of AT&T)
Communications of Ohio, Inc. for a)
Certificate of Public Convenience and)
Necessity to Provide Intrastate)
Telecommunications Services Within the)
State of Ohio)

Case No. 96-190-TP-ACE



REPLY MEMORANDUM

The Office of the Ohio Consumers' Counsel (OCC), having previously moved to intervene in this proceeding, now offers this reply to one issue presented by the "Memorandum Contra of AT&T Communications of Ohio, Inc." filed in this proceeding on May 23, 1996. In the Memorandum Contra, AT&T Communications of Ohio, Inc. (AT&T) opposed, *inter alia*, the Motion to Intervene filed by Ameritech Ohio (Ameritech). One of AT&T's bases for opposing Ameritech's intervention requires this response from OCC.

In its Memorandum Contra, AT&T states:

Finally, at best, the statements of Ameritech in its Motion can only be perceived as disingenuous and inconsistent with its recent execution of a Settlement Agreement. See, In re Implementation of Substitute Senate Bill 306 or Substitute House Bill 734 of the 121st General Assembly, Case No. 96-532-TP-UNC, Settlement Agreement, May 22, 1996, at page 9. In the Settlement Agreement, Ameritech agreed that the mandates of the Telecommunications Act of 1996 (the "Act") apply to it, including those mandates related to local exchange certification. The Act is clear -- "no state or local statute or regulation, or other state or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications services." Section 253(a). In light of AT&T's years of establishing its technical,

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financial, and managerial qualifications in Ohio, Ameritech's demand for an oral hearing can only be viewed as a violation of this prohibition.

AT&T Memorandum Contra at 3 (footnote omitted).

OCC is also a signatory of the aforementioned Settlement Agreement. As a signatory, OCC is compelled to express its view that Ameritech's (or any party's) request for a hearing in a local service certification case (whether AT&T's or any other carrier's) does not violate the terms of that Agreement.

In the first place, the portion of the Agreement cited by AT&T states, in pertinent part, "Ameritech Ohio shall not assert or claim that its plan of alternative regulation operates as a bar to the application to Ameritech Ohio of the mandates of the Telecommunications Act of 1996 ... relating to the following matters: ... Local Exchange Service Certification...." Settlement Agreement at 9.¹ Clearly, Ameritech's request for an oral hearing does not represent an assertion or claim that Ameritech's plan bars consideration of AT&T's application.

More importantly, however, neither a party's request for an oral hearing nor the actual holding of such a hearing in a certification case violates any precept of the 1996 Act. This very point arose in the context of AT&T's original February 28, 1996 filing in this docket, which was styled as a "Notice of Amendment to Certificate." There, AT&T argued that no specific authorization from the Commission was necessary for it to provide local service. AT&T also argued that a requirement that AT&T obtain a certificate, particularly if that certificate could only be obtained after notice and hearing and a

¹ Also, the Settlement Agreement (at 2-3) requires the signatories to support draft legislation which, *inter alia*, gives the Public Utilities Commission of Ohio the authority to implement the 1996 Act.

Commission finding of public convenience and necessity, violated Sec. 253(a) of the 1996 Act. AT&T "Notice" at 3.

In OCC's "Motion to Intervene and Objection to Amendment of Certificate" (filed March 20, 1996), we noted that

AT&T relies on the Act as a key basis for its request. It extracts one subpart (Section 253(a)) of the Act and expects this language to be taken in isolation from the rest of that section. AT&T states:

To the extent R.C. Section 4905.24 purports to require that AT&T obtain a Certificate of Public Convenience and Necessity from the Commission prior to providing any intrastate telecommunications service in Ohio, the section constitutes a barrier to entry preempted by section 253(a) of the Act. That is especially true if such a certificate can only be issued after notice and hearing and a Commission finding that the public convenience and necessity requires such a certificate as provided in R.C. Section 4905.24.

Notice at 3. AT&T's argument ignores the next subpart of the Act, however, which is crucial in determining the authority of this Commission in carrying out Section 253. Specifically, Section 253(b) provides:

(b) STATE REGULATORY AUTHORITY - Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.


Clearly, nothing in Section 253 -- when viewed in its entirety -- preempts this Commission from treating AT&T's "notice" as an application to provide local exchange service, or from requiring a hearing in order to determine AT&T's ability to meet "requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."

OCC Motion to Intervene and Opposition to Amendment of Certificate at 3. A hearing to determine whether a carrier has the financial, technical, and managerial capabilities to provide basic local exchange service is not barred by Sec. 253.

OCC presents this argument here out of what might be characterized as an excess of caution. In the sometimes contentious arena of the introduction of local exchange competition, OCC's participation in the Settlement Agreement should not be seen as a bar to OCC's making a request for a local hearing. In the instant case, however, OCC has stipulated that AT&T presently possesses the technical, managerial, and financial capabilities to provide local exchange service in the territory in which AT&T seeks certification. *See* Stipulation and Settlement (April 24, 1996). Based on that stipulation, OCC *did not* request an oral hearing in this matter. Further, OCC does not support Ameritech's request for an oral hearing on the issues currently before the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply Memorandum was served by first class mail, postage prepaid, or hand-delivered on the parties identified below this 3rd day of June, 1996.



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